

WILLIAM E. JEFFERS, JR.

IBLA 79-425

Decided April 4, 1980

Appeal from decision of the Wyoming State Office, Bureau of Land Management, to award lease for parcel WY 4076 to the number one drawee. W67807.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Filing -- Payments: Generally

A sight draft is an acceptable form of remittance to satisfy 43 CFR 3112.2-1(a)(1) governing filing fees for simultaneous oil and gas lease offers.

APPEARANCES: David R. Vandiver, Esq., Losee, Carson & Dickerson, P.A., Artesia, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

William E. Jeffers, Jr., appeals the decision dated May 2, 1979, of the Wyoming State Office, Bureau of Land Management (BLM), vacating its April 19, 1979, decision which had rejected the lease offer of American Petrofina Company of Texas (APCT) for parcel WY 4076 for failure to pay the filing fee. APCT was drawn number one for the parcel in the March 1979 simultaneous oil and gas lease drawing. Appellant's lease offer was drawn second.

APCT submitted a sight draft for \$700 in payment of the filing fees for its March 1979 drawing entry cards (DECs). The draft was returned to BLM by APCT's bank as uncollectible. BLM then rejected the lease offer. APCT had its bank write BLM in confirmation of a telephone conversation admitting bank error in returning the draft as uncollectible. BLM then issued the decision here appealed, vacating its earlier decision, acknowledging receipt of the advance rental, and stating that the lease would issue.

In his statement of reasons appellant argues that BLM erred in vacating its decision because APCT's remittance was unacceptable regardless of bank error. Appellant cites 43 CFR 3112.2-1(a)(1) which governs how the filing fee shall be paid. That regulation does not specifically refer to a sight draft. Appellant also contends that this Board has ruled that payment by sight drafts is unacceptable. We have ruled that a sight draft is not an acceptable form of payment for a bid deposit for a competitive lease, Mesa Petroleum Co., 37 IBLA 103 (1978), or for advance rental on an oil and gas lease, R. M. Barton, 9 IBLA 243 (1973), n.3 at 244. The rationale in both cases, however, is different from the circumstances here. In those cases the regulations were couched in mandatory language using the word "must" followed by the enumeration of the permitted types of remittances, and they did not allow payment by uncertified checks. It is clear in both cases that the only acceptable remittances were instruments where funds were committed or payment was otherwise guaranteed. The regulation applicable here, 43 CFR 3112.2-1(a)(1), however, is different in language and import. It provides: "The entry card must be accompanied by a remittance covering the filing fee of \$10. The filing fee may be paid in cash or by money order, bank draft, bank cashier's check or check." The mandatory language "must be accompanied" refers to "a remittance" of \$10. The remainder of the regulation is illustrative of types of remittances which are acceptable. Use of the permissive word "may" demonstrates that the types of remittances listed thereafter are merely examples and not the only acceptable instruments. Significantly, the regulation lists a "check" as one of the examples. This would include a personal check which is not a form of guaranteed payment, but is drawn on a deposit in a bank.

A check is a type of sight draft, payable on demand. 2 Anderson, Uniform Commercial Code, p. 610 (2d ed. 1971), U.C.C. §§ 3-104, 3-409(1). Not all sight drafts are checks, of course. Under section 3-409(1) of the Uniform Commercial Code the drawee is not liable on a sight draft until he accepts it. This differs from a money order, bank draft, or bank cashier's check most significantly in that it commits no particular fund to the satisfaction of a debt until it is presented and accepted for payment. See 2 Anderson, Uniform Commercial Code, pp. 593-639 (2d ed. 1971). The draft submitted by APCT was payable on sight by APCT itself, through the bank. APCT was both the drawer and the drawee on the instrument. However, for many commercial purposes there is little practical difference between using personal checks or sight drafts for remitting payments. In either case, if the instrument is returned as uncollectible, the payee's recourse is to recover the unpaid obligation. Increasingly in modern banking practices such drafts are being used instead of personal checks. All checks or drafts submitted are accepted subject to collection and final payment without cost to the Government (see 43 CFR 1822.1-2). Furthermore, it appears to be the general practice within the various

BLM offices to accept sight drafts. This reflects a practical interpretation of the regulation. We see no basis for overturning that interpretation and practice here. Also, since the bank admitted error in not submitting the sight draft for payment here, action by BLM was proper and will be upheld.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

I concur:

James L. Burski
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

While I would rule there are substantial differences between a check and a sight draft, among which are the criminal penalties for improper use of checks, I construe the second sentence of 43 CFR 3112.2-1(a)(1) as directory rather than mandatory. For this reason, it is within Bureau of Land Management authority to accept a sight draft as a remittance.

Joseph W. Goss
Administrative Judge

